

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JUANA HERNANDEZ, AS
ADMINISTRATRIX OF THE
ESTATE OF DANNY NICACIO
and ARMANDO MAISONET,

Plaintiffs,

v.

SCOTTSDALE INSURANCE
COMPANY and UTICA
MUTUAL INSURANCE
COMPANY,

Defendants.

CIVIL ACTION NO. 05-40141-FDS

**DEFENDANTS' SECOND SUPPLEMENT TO THEIR REPLY IN SUPPORT OF THEIR
JOINT MOTION TO DISMISS PURSUANT TO FED. R. CIV. P.
12 (b)(6), OR TO STAY ACTION IF NOT DISMISSED IN ITS ENTIRETY**

Pursuant to the Court's Order dated March 6, 2006 on *Defendants' Motion for Leave to File Supplement to Their Reply in Support of Their Joint Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6), or to Stay Action if Not Dismissed in its Entirety*, the Defendants, Scottsdale Insurance Company ("Scottsdale") and Utica Mutual Insurance Company ("Utica"), hereby file their second supplement to their *Reply in Support of Their Joint Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6), or to Stay Action If Not Dismissed In Its Entirety* ("Reply").

In support of their supplement, the Defendants state as follows:

In Section VI of the Defendants' Reply, the Defendants address the fact that Scottsdale and Utica's insured, Saielo, Inc. has filed a motion to dismiss in the Underlying Actions based on the passage of the Protection of Lawful Commerce In Arms Act ("Act"), enacted on October 26, 2005. In Opposition to that Motion to Dismiss, the Plaintiffs have argued that the Act is

unconstitutional. In response to Plaintiffs arguments regarding the constitutionality of the Act, the United States of America has intervened in the Underlying Acts. A copy of the cover letter submitted with the United States' papers is attached hereto.¹

WHEREFORE, Defendants hereby respectfully request that the Court consider this supplement to their Reply.

Respectfully submitted,

Scottsdale Insurance Company,
By Its Attorneys,

Utica Mutual Insurance Company,
By Its Attorney,

/s/ Caryn L. Daum
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Dated: April 4, 2006

¹ The Defendants have not produced a complete copy of the United States' papers due to their length. In the event that this Court wants to see a complete copy of the papers submitted by the United States' attorneys, Defendants will forward them on to this Court.

CERTIFICATE OF SERVICE

I, Caryn L. Daum, hereby certify that a true and accurate copy of the foregoing document was served by first-class mail, postage prepaid, on this 4th day of April, 2006, upon:

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/s/ Caryn L. Daum
Caryn L. Daum



U.S. Department of Justice

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February 27, 2006

Via Federal Express Overnight Delivery

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Re: United States Government papers in Hernandez, et al. v. Kahr Arms, Inc., et al.,
No. CV WOCV2002-01747 Session C (Mass Sup. Ct.) & Maisonet, et al. v. Kahr
Arms, Inc., No. CV WOCCV2002-2025 Session C (Mass. Sup. Ct.)

Dear Counsel:

Enclosed please find the United States' papers in connection with the above-referenced cases in the Massachusetts Superior Court in Worcester. These documents are identical to those I forwarded earlier this month. Having heard no objection from Mr. Melzer's client, I have now filed all of the documents, except for the United States' brief defending the Protection of Lawful Commerce in Arms Act. The certificate of filing and service sets this out. The only additional document is the declaration setting for my attempt comply with Rule 9A, which is required under Rule 9A(b)(2).

It is my understanding that all of the substantive briefs in this case will be simultaneously filed. If whoever is responsible for such filing could advise me of the procedure for forwarding those briefs or the time when I should forward them to the Court so that all papers are filed together, I would appreciate it.

Please do not hesitate to contact me with any questions regarding the above.

Cordially,



Alexander K. Haas
Trial Attorney

Enclosures